

AMENDED IN ASSEMBLY APRIL 18, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 459

Introduced by Assembly Member Oropeza

(Coauthors: Assembly Members Coto, *Dymally*, and Pavley)

(Coauthors: Senators Alquist and ~~Bowen~~, *Bowen*, *Kuehl*, and *Romero*)

February 15, 2005

An act to ~~amend Section 10241 of the Business and Professions Code, and to amend Section 2963 of, and to add Section 1102.6c to;~~ the Civil Code, relating to transfer of real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, as amended, Oropeza. Transfer of real property: disclosure of *supplemental* property taxes.

~~(1) Existing~~

Existing law requires certain disclosures to be made upon the transfer of residential property and prescribes the manner and form of the disclosures. Among others, the seller of residential property subject to a continuing lien securing the levy of special taxes pursuant to the Mello-Roos Community Facilities Act, or a fixed lien assessment collected in installments to secure bonds issued pursuant to the Improvement Bond Act of 1915, is required to make a good faith effort to obtain a disclosure notice concerning the tax assessment from each local agency that levies the tax or collects the assessment, on the property being transferred, and to deliver it to the prospective purchaser, as long as the notices are made available by the local agency.

This bill would make it the sole responsibility of the seller of residential property, or his or her agent, in addition to any other disclosures required, to deliver to the prospective purchaser, as soon as practicable before execution of the contract, a one page, easy-to-read notice containing an estimation of the prorated supplemental property tax assessment associated with the property being transferred, along with related statements, in an itemized format. The notice also would require the signature of the prospective purchaser.

~~(2) Existing law requires every real estate broker who negotiates a loan to be secured directly or collaterally by a lien on residential property, within 3 business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, to cause to be delivered to the borrower a statement in writing, containing specified information. Existing law also sets forth disclosures required by an arranger of credit, as defined, to both purchaser and vendor in a transaction for the purchase of a dwelling for not more than 4 families.~~

~~This bill would add to these required disclosures of real estate brokers and arrangers of credit, a copy of the notice described in (1) above. The bill would provide that this disclosure requirement may be satisfied by delivering a disclosure notice obtained from any source that satisfies the disclosure requirements for the notice described in (1).~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 10241 of the Business and Professions~~
- 2 ~~Code is amended to read:~~
- 3 ~~10241. The statement required by Section 10240, the form of~~
- 4 ~~which shall be approved by the commissioner, shall set forth~~
- 5 ~~separately the following items:~~
- 6 ~~(a) The estimated maximum costs and expenses of making the~~
- 7 ~~loan, which are to be paid by the borrower, including but not~~
- 8 ~~limited to, the following:~~
- 9 ~~(1) Appraisal fees.~~
- 10 ~~(2) Escrow fees.~~
- 11 ~~(3) Title charges.~~

1 ~~(4) Notary fees.~~

2 ~~(5) Recording fees.~~

3 ~~(6) Credit investigation fees.~~

4 ~~If a real estate licensee performs or is to perform any of the~~
5 ~~services for which costs and expenses are disclosed pursuant to~~
6 ~~this subdivision, the licensee shall be entitled to those costs and~~
7 ~~expenses in addition to the charges specified in subdivision (b).~~

8 ~~(b) The total of the brokerage or commissions contracted for,~~
9 ~~or to be received by, the real estate broker for services performed~~
10 ~~as an agent in negotiating, procuring, or arranging the loan or the~~
11 ~~total of loan origination fees, points, bonuses, and other charges~~
12 ~~in lieu of interest to be received by the broker if he or she elects~~
13 ~~to act as a lender rather than agent in the transaction.~~

14 ~~(c) Any liens against the real property, as disclosed by the~~
15 ~~borrower, the approximate amount thereof, and whether each lien~~
16 ~~will remain senior, or will be subordinate, to the lien that will~~
17 ~~secure the loan.~~

18 ~~(d) The estimated amounts to be paid on the order of the~~
19 ~~borrower, as disclosed by the borrower, including, but not limited~~
20 ~~to:~~

21 ~~(1) Fire insurance premiums.~~

22 ~~(2) Amounts due on prior liens, including interest or other~~
23 ~~charges arising in connection with the payment, release,~~
24 ~~reconveyance, extinction, or other removal of record of the prior~~
25 ~~liens.~~

26 ~~(3) Amounts due other creditors.~~

27 ~~(4) Assumption, transfer, forwarding, and beneficiary~~
28 ~~statement fees.~~

29 ~~(e) The estimated balance of the loan funds to be paid to the~~
30 ~~borrower after deducting the total of amounts disclosed pursuant~~
31 ~~to subdivisions (a), (b), and (d).~~

32 ~~(f) The principal amount of the loan.~~

33 ~~(g) The rate of interest.~~

34 ~~(h) The term of the loan, the number of installments, the~~
35 ~~amount of each installment, and the approximate balance due at~~
36 ~~maturity, and the following notice in 10-point bold typeface:~~

37 ~~-~~

38 ~~“NOTICE TO BORROWER: IF YOU DO NOT HAVE THE~~
39 ~~FUNDS TO PAY THE BALLOON PAYMENT WHEN IT~~
40 ~~COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN~~

1 ~~AGAINST YOUR PROPERTY TO MAKE THE BALLOON~~
2 ~~PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO~~
3 ~~PAY COMMISSIONS, FEES, AND EXPENSES FOR THE~~
4 ~~ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU~~
5 ~~ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR~~
6 ~~THE BALLOON PAYMENT, YOU MAY LOSE THE~~
7 ~~PROPERTY AND ALL OF YOUR EQUITY THROUGH~~
8 ~~FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON~~
9 ~~THE AMOUNT AND TERMS OF THIS LOAN.”~~

10 -
11 ~~(i) A statement containing the name of the real estate broker~~
12 ~~negotiating the loan, his or her license number, and the address of~~
13 ~~his or her licensed place of business.~~

14 ~~(j) If the broker anticipates that the loan to the borrower may~~
15 ~~be made wholly or in part from broker-controlled funds, a~~
16 ~~statement to that effect.~~

17 ~~For purposes of this section, “broker-controlled funds” means~~
18 ~~funds owned by the broker, by a spouse, child, parent,~~
19 ~~grandparent, brother, sister, father-in-law, mother-in-law,~~
20 ~~brother-in-law, or sister-in-law of the broker, or by any entity in~~
21 ~~which the broker alone or together with any of the above~~
22 ~~relatives of the broker has an ownership interest of 10 percent or~~
23 ~~more.~~

24 ~~(k) The terms of prepayment privileges and penalties, if any.~~

25 ~~(l) A statement that the purchase of credit or credit disability~~
26 ~~insurance is not required as a condition for the making of the~~
27 ~~loan.~~

28 ~~(m) If the loan is one that is within the limits specified in~~
29 ~~Section 10245, a certification by the real estate licensee~~
30 ~~negotiating the loan that the loan is being made in compliance~~
31 ~~with the provisions of this article.~~

32 ~~(n) A copy of the notice delivered pursuant to Section 1102.6c~~
33 ~~of the Civil Code. The disclosure notice requirements of this~~
34 ~~subdivision may be satisfied by delivering a disclosure notice~~
35 ~~obtained from any source that satisfies the requirements of~~
36 ~~subdivision (a) of Section 1102.6c of the Civil Code.~~

37 ~~SEC. 2.~~

38 *SECTION 1.* Section 1102.6c is added to the Civil Code, to
39 read:

1102.6c. (a) In addition to any other disclosure required pursuant to this article, it shall be the sole responsibility of the seller of any real property subject to this article, or his or her agent, to deliver to the prospective purchaser a one page, easy-to-read notice in at least 12-point type containing all of the following in an itemized format:

(1) An estimation of the prorated supplemental assessment for the current fiscal year based upon the new sale price of the property being transferred, together with the following statement: “You should anticipate receiving a—*‘supplemental tax’* *‘supplemental’ property tax* bill in the near future in the approximate amount of \$_____.”

(2) A statement as follows: “Supplemental tax bills are not mailed to your lender. If you have arranged for your tax payments to be paid through an impound account, this tax bill may not be paid by your lender. You should contact your lender regarding payment of supplemental tax bills in addition to your annual property tax bill. Make sure your lender is aware you are referring to a supplemental tax bill.”

(3) A signature block for the prospective purchaser or purchasers, including the date of signature, positioned immediately adjacent to the estimation of the supplemental assessment described in paragraph (1).

(4) A statement as follows: “You should receive this disclosure as soon as practicable before execution of the contract. ‘Execution’ means the making or acceptance of an offer.”

(b) The one page notice described in subdivision (a) shall include a title at the top of the page, in at least 14-point type, as follows: “Notice of Your ‘Supplemental’ Property Tax Bill.”

(c) The notice required pursuant to this section shall be delivered to the prospective purchaser as soon as practicable before execution of the contract. For purposes of this section, “execution” means the making or acceptance of an offer.

~~SEC. 3. Section 2963 of the Civil Code is amended to read:~~

~~2963. The disclosures required to both purchaser and vendor by this article include all of the following:~~

~~(a) An identification of the note or other credit documents or security documents and of the property which is the security for the transaction.~~

1 ~~(b) A description of the terms of the promissory note or other~~
2 ~~credit documents or a copy of the note or other credit documents.~~

3 ~~(c) Insofar as available, the principal terms and conditions of~~
4 ~~each recorded encumbrance that constitutes a lien upon the~~
5 ~~property that is or will be senior to the financing being arranged,~~
6 ~~including the original balance, the current balance, the periodic~~
7 ~~payment, any balloon payment, the interest rate (and any~~
8 ~~provisions with respect to variations in the interest rate), the~~
9 ~~maturity date, and whether or not there is any current default in~~
10 ~~payment on that encumbrance.~~

11 ~~(d) A warning that, if refinancing would be required as a result~~
12 ~~of lack of full amortization under the terms of any existing or~~
13 ~~proposed loans, that refinancing might be difficult or impossible~~
14 ~~in the conventional mortgage marketplace.~~

15 ~~(e) If negative amortization is possible as a result of any~~
16 ~~variable or adjustable rate financing being arranged, a clear~~
17 ~~disclosure of this fact and an explanation of its potential effect.~~

18 ~~(f) In the event that the financing involves an all inclusive trust~~
19 ~~deed, the disclosure shall indicate whether the credit or security~~
20 ~~documents specify who is liable for payment or responsible for~~
21 ~~defense in the case of an attempted acceleration by a lender or~~
22 ~~other obligee under a prior encumbrance, and whether or not the~~
23 ~~credit or security documents specify the responsibilities and~~
24 ~~rights of the parties in the event of a loan prepayment respecting~~
25 ~~a prior encumbrance that may result in a requirement for~~
26 ~~refinancing, a prepayment penalty, or a prepayment discount and,~~
27 ~~if that specification occurs, a recital of the provisions that apply.~~

28 ~~(g) If the financing being arranged or any of the financing~~
29 ~~represented by a prior encumbrance could result in a balloon~~
30 ~~payment, or in a right in the lender or other obligee under that~~
31 ~~financing to require a prepayment of the principal balance at or~~
32 ~~after a stipulated date, or upon the occurrence of a stipulated~~
33 ~~event, a disclosure of the date and amount of any balloon~~
34 ~~payment or the amount that would be due upon the exercise of~~
35 ~~the right by the lender or obligee, and a statement that there is no~~
36 ~~assurance that new financing or loan extension will be available~~
37 ~~at the time of that occurrence.~~

38 ~~(h) If the financing being arranged involves an all inclusive~~
39 ~~trust deed or real property sales contract, a disclosure of the party~~
40 ~~to whom payments will be made, and who will be responsible for~~

1 ~~remitting these funds to payees under prior encumbrances and~~
2 ~~vendors under this transaction, and a warning that, if that person~~
3 ~~is not a neutral third party, the parties may wish to agree to have~~
4 ~~a neutral third party designated for these purposes.~~

5 ~~(i) A disclosure on the identity, occupation, employment,~~
6 ~~income, and credit data about the prospective purchaser, as~~
7 ~~represented to the arranger by the prospective purchaser; or,~~
8 ~~specifically, that no representation as to the creditworthiness of~~
9 ~~the specific prospective purchaser is made by the arranger. A~~
10 ~~warning should also be expressed that Section 580b of the Code~~
11 ~~of Civil Procedure may limit any recovery by the vendor to the~~
12 ~~net proceeds of the sale of the security property in the event of~~
13 ~~foreclosure.~~

14 ~~(j) A statement that loss payee clauses have been added to~~
15 ~~property insurance protecting the vendor, or that instructions~~
16 ~~have been or will be directed to the escrowholder, if any, in the~~
17 ~~transaction or the appropriate insurance carriers for addition of~~
18 ~~loss payee clauses, or a statement that, if those provisions have~~
19 ~~not been made, that the vendor should consider protecting~~
20 ~~himself or herself by securing those clauses.~~

21 ~~(k) A statement that a request for notice of default under~~
22 ~~Section 2924b has been recorded, or that, if it has not been~~
23 ~~recorded, the vendor should consider recording a request for~~
24 ~~notice of default.~~

25 ~~(l) That a policy of title insurance has been obtained or will be~~
26 ~~obtained and be furnished to the vendor and purchaser, insuring~~
27 ~~the respective interests of the vendor and purchaser, or that the~~
28 ~~vendor and purchaser individually should consider obtaining a~~
29 ~~policy of title insurance.~~

30 ~~(m) That a tax service has been arranged to report to the~~
31 ~~vendor whether property taxes have been paid on the property,~~
32 ~~and who will be responsible for the continued retention and~~
33 ~~compensation of tax service; or that the vendor should otherwise~~
34 ~~assure for himself or herself that the taxes on the property have~~
35 ~~been paid.~~

36 ~~(n) A disclosure whether the security documents on the~~
37 ~~financing being arranged have been or will be recorded pursuant~~
38 ~~to Section 27280 of the Government Code, or a statement that the~~
39 ~~security of the vendor may be subject to intervening liens or~~
40 ~~judgments that may occur after the note is executed and before~~

1 any resort to security occurs if the security documents are not
2 recorded.

3 (e) If the purchaser is to receive any cash from the proceeds of
4 the transaction, a statement of that fact, the amount, the source of
5 the funds, and the purpose of the disbursement as represented by
6 the purchaser.

7 (p) A statement that a request for notice of delinquency under
8 Section 2924c has been made, or that, if it has not been made, the
9 vendor should consider making a request for a notice of
10 delinquency.

11 (q) A copy of the notice delivered pursuant to Section 1102.6e,
12 unless subdivision (n) of Section 10241 of the Business and
13 Professions Code is applicable. The disclosure notice
14 requirements of this subdivision may be satisfied by delivering a
15 disclosure notice obtained from any source that satisfies the
16 requirements of subdivision (a) of Section 1102.6e.